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1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 18-23538-rdd

4 - - - - - x

5 In the Matter of:

6

7 SEARS HOLDINGS CORPORATION,

8

9 Debtor.

10 - - - - - x

11

12 United States Bankruptcy Court

13 300 Quarropas Street, Room 248

14 White Plains, NY 10601

15

16 July 15, 2020

17 10:03 AM

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20

21 B E F O R E :

22 HON ROBERT D. DRAIN

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: JUSTIN WALKER

1 HEARING re Notice of Agenda of Matters Scheduled for
2 Telephonic Hearing on July 15, 2020 at 10:00 a.m.

3

4 HEARING re Application for Final Professional Compensation/
5 Third and Final Fee Application of Deloitte Transactions and
6 Business Analytics LLP for Compensation for Services
7 Rendered and Reimbursement of Expenses Incurred as
8 Bankruptcy Advisor from November 1, 2018 through September
9 30, 2019 fee: \$8,206,710.50, expenses:
10 \$364,650.18 (ECF #7960)

11

12 HEARING re Fee Examiner's Statement (ECF #8263)

13

14 HEARING re Notice Regarding Second Distribution Pursuant to
15 Administrative Expense Claims Consent Program filed by
16 Garrett A. Fail on behalf of Sears Holdings Corporation
17 (ECF #8062)

18

19 HEARING re Objection to Notice Regarding Second Distribution
20 Pursuant to Administrative Expense Claims Consent Program
21 (related document(s)8062) filed by Jayson Macyda on behalf
22 of Koolatron Corporation (ECF #8065)

23

24

25 Transcribed by: Sonya Ledanski Hyde

1 A P P E A R A N C E S :

2

3 WEIL, GOTSHAL & MANGES LLP

4 Attorney for the Debtors

5 767 Fifth Avenue

6 New York, NY 10153

7

8 BY: BRYAN PODZIUS (TELEPHONICALLY)

9

10 DAVIDOFF HUTCHER & CITRON

11 Attorney for Orient Craft Limited and HK Sino-Thai
12 Trading Company Limited.

13 605 3rd Avenue

14 New York, NY 10158

15

16 BY: DAVID WANDER (TELEPHONICALLY)

17

18 MORRISON & FOERSTER

19 Attorney for Icon Health and Fitness

20 250 W 55th Street

21 New York, NY 10019

22

23 BY: BEN BUTTERFIELD (TELEPHONICALLY)

24

25

1 ALSO PRESENT TELEPHONICALLY:

2

3 PAUL HARNER

4 MR. MARRIOTT

5 MARILYN MACRON

6 DORON YITZCHAKI

7 JENNIFER MARINES

8 GARRETT FAIL

9 CHRISTOPHER STAUBLE

10 JAYSON MACYDA

11 DEBORAH MICHELSON

12 KAREN DINE

13 JOSEPH SARACHEK

14 NATAN BANE

15 ARLENE ALVES

16 LAWRENCE LICTMAN

17 MARK DUEDALL

18 SARA BRAUNER

19 PHILLIP C. DUBLIN

20 SHIRIN MAHKAMOVA

21 RYAN MURRAY

22 ALEXANDER TIKTIN

23 ANA LUCIA HURTADO

24 ROLAND YOUNG

25 KARA CASTEEL

1 JOSEPH STEINFELD
2 EMILY PAGORSKI
3 LEE J. ROHN
4 MICHELE BONSIGNORE
5 MARIA CHUTCHIAN

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1 P R O C E E D I N G S

2 THE COURT: Good morning, this is Judge Drain.

3 We're here in in re: Sears Holdings Corporation et. al.

4 This is a completely telephonic hearing, so when you speak,

5 you should identify yourself and your client. I may

6 thereafter ask you to do it again if I think the Court

7 Reporter can't put together your name with your voice.

8 There's one authorized recording of this hearing, taken by

9 Court Solutions. They provide a copy of it to our Clerk's

10 office on a daily basis, and therefore, if you want to order

11 a transcript, you should do so through our Clerk's office.

12 So, I have the agenda updated for today's

13 hearings, and I'm happy to go down it, particularly since

14 it's very limited.

15 MR. PODZIUS: Good morning, Your Honor, Bryan

16 Podzius, Weil, Gotshal & Manges, for the Debtors. Sounds

17 like --

18 THE COURT: Okay, good morning.

19 MR. PODZIUS: -- I'll take the items in order,

20 Your Honor. The first item on the agenda is the third and

21 final fee application of Deloitte Transaction and Business

22 Analytics. I understand Deloitte has reached a consensual

23 resolution with respect to their final fee application, and

24 a representative from Deloitte should be on the line to

25 update the Court on this resolution.

1 THE COURT: Okay, and as I -- maybe I'm wrong, but
2 I understand that resolution is actually set forth in the
3 fee application. Have there been any other developments on
4 it?

5 MR. HARNER: Good morning, Your Honor, it's Paul
6 Harner, the Fee Examiner. We have filed a separate
7 statement, indicating that we're in agreement with that
8 resolution, and accordingly, have no objection. We've not
9 yet seen a Final Form of Proposed Order but expect to in
10 short order, and expect that the Debtors will submit it.

11 THE COURT: Okay, very well. Does anyone have
12 anything more to say on this Final Fee Application? All
13 right, I will grant the application in the amount sought,
14 which, as already noted on the record, reflects a
15 substantial reduction, after discussions with Mr. Harner, as
16 the fee examiner. I reviewed the application on my own, and
17 the reduction is consistent with my view of the application,
18 in particular, time spent on monthly fee requests for
19 reporting and other items. So the concession by Deloitte is
20 well within my own view of the application and without all
21 the analytical tools that the Fee Examiner has.

22 So I will grant the application in the amount
23 sought in that application. Someone should email chambers
24 the final order, with Schedules A and B attached to it.

25 MR. HARNER: Your Honor, it's Paul Harner again.

1 With that, may Mr. Marriott and I be excused for the balance
2 of the hearing?

3 THE COURT: Yes, that's fine, thanks.

4 MR. HARNER: Thank you.

5 MR. MARRIOTT: Thanks, Your Honor.

6 THE COURT: Okay, and obviously, the Deloitte
7 representative can be excused, too.

8 MAN 1: Thank you, Your Honor.

9 THE COURT: And then, there are a number of
10 uncontested or adjourned matters on the agenda. I don't
11 think there are any other live matters, although I think the
12 Debtors may want to give an update in respect of their
13 amended notice regarding second distribution pursuant to
14 administrative expense claim consent program, which was
15 filed yesterday. Obviously, the Debtor had previously filed
16 a notice regarding second distribution with a June 10
17 response deadline. And in light of responses, I gather both
18 formal and informal, and developments since then, they have
19 amended the notice and the distribution, as reflected in the
20 amended notice that I just mentioned. Is anyone on the line
21 prepared to just update the record on where we are on that?

22 MR. PODZIUS: Yeah, good morning, Your Honor, it's
23 Bryan Podzius again, Weil, Gotshal, for the Debtors. Happy
24 to walk Your Honor through. We just have a short update
25 prepared, and happy to answer any questions Your Honor has.

1 THE COURT: Okay.

2 MR. PODZIUS: If that's okay, I'll proceed with
3 the update.

4 THE COURT: That's fine.

5 MR. PODZIUS: Your Honor, you may recall at the
6 June omnibus hearing, my colleague provided the Court with
7 an update with respect to the second distribution to certain
8 administrative creditors. In late June, Your Honor, the
9 Debtors filed their initial schedule of second-distribution
10 participants. That initial schedule was filed at Docket
11 Number 8062. At Your Honor's suggestion, the Debtors
12 indicated in their notice that the parties had until July
13 13th to reconcile their non-opt-out administrative claims,
14 in order to participate in the second distribution.

15 The Debtors also indicated in that same notice,
16 Your Honor, that they would be filing an amended schedule
17 ahead of today's hearing. As Your Honor mentioned,
18 yesterday, the Debtors filed the revised schedule of second-
19 distribution participants. The amended schedule has been
20 filed at Docket Number 8293. The revised schedules include
21 four separate schedules covering four buckets of claims, and
22 I'll just quickly walk Your Honor through the four buckets.

23 The first two buckets, set forth on Schedule 1 and
24 Schedule 2 to the notice, are for de minimis claims. As
25 Your Honor may recall, the Debtors previously received

1 authority to pay certain de minimis claims. The purpose of
2 this relief was to allow the Debtors to save the cost and
3 expense of making multiple pro rata payments to smaller
4 Creditors and avoid the cost of reviewing and responding to
5 correspondence from these same Creditors.

6 The Claimants on Schedule 1 and Schedule 2 will
7 receive the full amounts owed to each Creditor, subject to
8 the applicable caps in the confirmation order, as part of
9 the Administrative Claims Consent Program. Between the two
10 de minimis schedules, Your Honor, the Debtors will be
11 finally resolving over 1,000 claims, which represent
12 approximately 68 percent of the total claims by number.

13 The third schedule that --

14 THE COURT: So just to be -- I'm sorry. So just
15 to be clear, then, there will be no further distributions to
16 this group, except with respect to those who have disputed
17 claims, correct?

18 MR. PODZIUS: If I may clarify, the first -- the
19 first two schedules we're discussing, Your Honor, are the de
20 minimis claims. Those schedules --

21 THE COURT: Right, that --

22 MR. PODZIUS: -- those Claimants, yeah, they will
23 receive one more payment, which will satisfy their claim in
24 full, correct.

25 THE COURT: Right, and that -- when I referred to

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1 this group, I meant the de minimis claim groups on those two
2 schedules.

3 MR. PODZIUS: Correct, Your Honor.

4 THE COURT: Okay. All right.

5 MR. PODZIUS: Moving on, once again, Bryan
6 Podzius, Weil, Gotshal, for the Debtors. The third schedule
7 that we filed is for non-opt-out reconciled claims. These
8 claims, Your Honor, are subject to an 80 percent cap on
9 total recoveries, and the Debtors are intending to
10 distribute 28.7 percent of their allowed claim to these
11 Creditors. This is the catch-up payment, Your Honor, that
12 will bring these Creditors even with the opt-in Creditors,
13 who previously also received 28.7 percent on their allowed
14 claim back in December. Ultimately, this non-opt-out group
15 is receiving \$11 million to over 250 non-opt-out Claimants.

16 The final category, Your Honor, is Schedule 4.

17 This is for disputed non-opt-out claims. Here, the Debtors
18 have listed non-opt-out claims that have not been fully and
19 finally reconciled. As the Debtor stated at the June
20 omnibus hearing, the Debtors will be reserving for the
21 disputed claims in the same 28.7 percent amount that they
22 are distributing to the allowed non-opt-out Creditors. The
23 Debtors are holding back approximately \$13 million on
24 account of this reserve for approximately 240 claim.

25 THE COURT: Okay.

1 MR. PODZIUS: Your Honor, the second distribution
2 involved the reconciliation and review of over 1,500 claims.
3 At the hearing in June, the Debtors said we would work to
4 resolve as many claims as possible prior to today's hearing.
5 We've done that, Your Honor, and we've eliminated certain
6 claims from the disputed list. The Debtors have also
7 responded to dozens of inquiries from Creditors, requesting
8 clarification around the treatment.

17 And, Your Honor, I set forth in the notice that we
18 filed yesterday, the Debtors are willing to extend the
19 reconciliation deadline for any Creditor whose treatment was
20 moved into the disputed category in the amended schedules
21 that were filed on Tuesday. These Creditors whose treatment
22 was changed will have until July 31st to fully and finally
23 reconcile their claims in order to participate in the second
24 distribution.

25 The Debtors strongly encourage --

1 THE COURT: And the second distribution is
2 intended to be on or around, what, August 4th, I think?

3 MR. PODZIUS: That's right, Your Honor, we're
4 intending to complete that on or around August 5th, is I
5 believe the date we put in the notice.

6 THE COURT: August 5th, all right. So, obviously,
7 as with the original notice, those whose claims are in the
8 disputed group under the amended notice should reach out to
9 the Debtors to try to reconcile their claims. I gather this
10 is -- the movement is entirely due to a determination that
11 the Claimant whose claim has been moved to the disputed
12 category is the recipient of an avoidable transfer?

13 MR. PODZIUS: That's correct, Your Honor.

14 THE COURT: All right, so when they reach out, I
15 guess if they are the subject of an adversary proceeding,
16 they should reach out to Counsel for the Debtor in that
17 adversary proceeding. Are there any who are not yet named
18 in an adversary proceeding?

19 MR. PODZIUS: Your Honor, there is an email
20 address at the top of the notice where Creditors can reach
21 out to. It's an M3 email address, but we can quickly -- if
22 Creditors reach out to that email address, we can quickly
23 identify the appropriate preference firm and professionals
24 who are responsible for the preferencing quickly move to
25 reconcile. So I would recommendation to Creditors that they

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1 use that email address, and of course, if they're aware or
2 they're subject to a suit, they can reach out to the
3 indicated Counsel as well.

4 THE COURT: Okay, and the preference avoidance
5 Counsel are -- you've brought them up to speed as to this
6 and the claim amount that the Claimant has as well, I
7 gather?

8 MR. PODZIUS: Yeah.

9 THE COURT: I mean, I see several of -- I see some
10 of them on the dashboard for today's call, so I'm assuming
11 that the case, but I just want to make sure of that.

12 MR. PODZIUS: Yes, Your Honor, the Debtors'
13 professionals have had a number of conversations among all
14 the preference folks and the folks reconciling the claims.
15 And the preference firms are on the call this morning if you
16 have any questions, but we're all coordinating very closely
17 and can move quickly to resolve claims, as soon as folks
18 reach out to them.

19 THE COURT: Okay. And again, these are not merits
20 issues. These are 502(b)(9) issues with -- because of the
21 preference exposure.

22 MR. PODZIUS: That's right, Your Honor.

23 THE COURT: Okay. All right. Does anyone have
24 any questions on the amended notice?

25 MR. WANDER: Your Honor, this is David Wander of

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1 Davidoff Hutcher & Citron, on behalf of HK Sino-Thai
2 Trading, if I may just make one small comment.

3 THE COURT: Okay. Good morning.

4 MR. WANDER: Good morning, Your Honor. So my
5 comment is simply to now press for the oral argument at the
6 September 11th adjourned hearing on the world imports issue.
7 There now will be a reserve, which means that there'll be
8 real prejudice to my client from further delay because, with
9 a favorable ruling, we'll be in a position to get that
10 money. My client does have a preference issue. We expect
11 that to be resolved before then, and therefore, I urge the
12 Court to put the world imports issue on the September 11th
13 hearing.

14 THE COURT: Well, let me address that. In the
15 agenda, Category 3 covers a number of adjourned matters.
16 Most are adjourned to September 11th, but not all of them.
17 For example, Item Number 8, which includes Sino-Thai, was
18 adjourned to October 16th, so I don't know -- I don't know
19 whether the other -- whether September 11 matters also have
20 that issue, or that issue is confined to the four Claimants
21 issued in Item 8 that are on for October 16th.

22 MR. WANDER: October's -- this is David Wander
23 again, Your Honor. October 16th is fine. I apologize. I
24 did not see that was the date for that matter, so I'm fine
25 with October 16th.

1 THE COURT: Okay. All right, that's fine.

2 MR. WANDER: (indiscernible).

3 THE COURT: Yeah, no, and I think when we were
4 here in the last omnibus hearing, I said that unless there
5 was a great deal of movement or facts justifying a further
6 adjournment, that would probably be the date. That's still
7 three months off, and I would urge the parties to try to
8 resolve their issues before then, if they can. And I'm
9 assuming that part of the reason why so many other matters
10 are adjourned to September 11th is that the Debtors are
11 actively trying to resolve those claims, which would narrow
12 down the claim universe pretty much, so you'd even have a
13 better idea of what distributions would be available for a
14 third distribution.

15 So I think we're going to have another omnibus
16 hearing on September 11th. The parties to the world imports
17 issue that are currently scheduled for October 16th should
18 discuss timing of the hearing before the September 11th
19 omnibus, and you can raise it with me then. But my working
20 assumption is that, if there's to be any additional briefing
21 or any preparation for that hearing, including the need for
22 any evidence, the parties will be focusing on that between
23 September 11th and the October 16th hearing date and discuss
24 that date before the September 11th hearing.

25 MR. WANDER: This is David Wander --

1 THE COURT: Before the September 11th omnibus
2 hearing, that is.

3 MR. WANDER: This is David Wander, Your Honor.
4 Thank you. I will confer with the other Creditors who are
5 in a similar situation prior to September 11th, and we can
6 continue this discussion at that hearing.

7 THE COURT: Well, not just with them, but with the
8 Debtors' Counsel.

9 MR. WANDER: Of course, yes. Of course, yes, Your
10 Honor.

11 THE COURT: And it's just these four, right? It's
12 just the ones that are on Item Number 8, Infiiloom, Winners,
13 Orient Craft, and HK Sino-Thai.

14 MR. PODZIUS: Your Honor, it's Bryan Podzius again
15 from Weil, Gotshal. There are, between the 10th and the
16 11th omnibus objections, which are both the world imports
17 objection, there are approximately seven to eight Creditors
18 outstanding who have a world imports legal issue, and we're
19 happy to discuss that with Your Honor at the September
20 omnibus hearing.

21 THE COURT: Okay.

22 MR. PODZIUS: I would just, you know, the Debtors'
23 position, Your Honor, is that, you know, of course many of
24 these creditors who are either opt-out Creditors and not
25 entitled to payment, or have potentially avoidable

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1 transfers, would be subject to 502(b), Your Honor.

2 THE COURT: Well, clearly, if there's an avoidable
3 transfer issue, we shouldn't be spending time on world
4 imports. People should just be focusing on that. Mr.
5 Wander prefaced his remarks by saying he believes he'd be
6 resolving the 502 --

7 MR. PODZIUS: That's great.

8 THE COURT: -- issue. But, just to be clear, I
9 think the only one that's scheduled for October is Item
10 Number 8. Nine through 11 on the agenda are all scheduled
11 for September 11th. So, if we are going to have, with
12 people who don't have another basis for an objection to
13 their claim -- namely, you know, books and records or
14 recipient of a potentially avoidable transfer -- and it's
15 just the so-called world imports issue, all those people
16 should be grouped together if we're going to have a hearing
17 on this, so that they have a chance to argue their claim,
18 too. I had been assuming that it was just the ones listed
19 in Item Number 8 on this agenda. If there are other ones
20 somewhere else, you know, before the September conference,
21 you should be speaking with them, along with the ones that
22 are listed on Item Number 8, to talk about a potential
23 October hearing.

24 And I want to be clear, again, just to repeat this
25 to make it clear: if there are other objections to those

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1 folks' claims, then I think it doesn't make sense to have --
2 you know, to just deal with one aspect of their claim
3 objection. But if just those -- if it's just the world
4 imports issue that's holding up distribution of a reserve,
5 then we should probably have the hearing on the 16th of
6 October.

7 MR. BUTTERFIELD: Your Honor, this is Ben
8 Butterfield from Morrison & Foerster --

9 THE COURT: Yes?

10 MR. BUTTERFIELD: -- for Icon Health and Fitness.
11 May I speak?

12 THE COURT: Okay.

13 MR. BUTTERFIELD: So, I just want to make sure I
14 understand. The first thing I'm confused about it, on the
15 agenda, the one I'm looking at was filed yesterday, Docket
16 29 -- or 8294, it said that both matters, Items Number 8 and
17 9, which is the 10th and 11th, are both adjourned to
18 September 11th, so I was unaware of a further adjournment.

19 THE COURT: Oh, I'm sorry. You know what? You're
20 right. It is adjourned to September 11th. But what I'm
21 saying is, I think we'll -- probably on October 16th, or
22 whatever the October date is -- I was misreading the agenda,
23 and I thank you for pointing that out to me. I think we
24 should be planning to have the world imports issue, if
25 that's a standalone issue for claims, there are no other

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1 claim objections to those particular claims that need to be
2 resolved, that that should -- the October omnibus date
3 should probably be the date to deal with that issue.

4 MR. BUTTERFIELD: Understood, Your Honor. My
5 second question was, I think it's possible that there's a
6 scenario where, you know, there are seven or eight Claimants
7 that are subject to the world imports issue. And let's say,
8 you know, six of those have preference, you know, are also
9 subject to a preference complaint. When the issue is --
10 when the world imports issue is heard in October, will the
11 six Claimants who have preference liability be able to speak
12 at the hearing or be heard? I mean, that's my client.

13 THE COURT: I don't know. I think, again, this is
14 something you should be -- everyone should be trying to work
15 out all their issues before the September omnibus date. If
16 they can't work out the world imports issue and most of the
17 people have resolved everything else, then I might well hear
18 it. if, like, one person has resolved everything else and
19 everyone else is still -- has multiple objections to their
20 claims, I probably wouldn't hear it. I'm just trying to be
21 efficient here.

22 MR. BUTTERFIELD: Understood, Your Honor. Yeah,
23 understood. Our concern is just, you know, we don't think
24 it's fair to have two separate hearings on world imports --

25 THE COURT: I agree -- I agree with that. I agree

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1 with that, and I wouldn't have two separate hearings. The
2 only issue is, would I have a separate hearing on world
3 imports, when most of the people have other grounds for
4 objections to their claims as well? I probably wouldn't,
5 then. But, you know, if six of seven have only the world
6 imports issue, I'd probably -- in all likelihood, I'd let
7 that seventh Claimant also appear for the October hearing.

8 MR. BUTTERFIELD: Thank you, Your Honor.

9 THE COURT: Okay, but I would urge everyone to try
10 to resolve their claims, all of them, including world
11 imports, before then, but if they can't, at least try to
12 resolve the other ones.

13 MR. PODZIUS: Once again, it's Bryan Podzius from
14 Weil, Gotshal, for the Debtors, Your Honor. We echo that
15 sentiment, and we're happy -- we agree that it should be a
16 joint hearing. And all the folks on the phone are more than
17 happy to reach out to the Debtors, myself included, to work
18 to resolve those claims.

19 THE COURT: All right.

20 MR. PODZIUS: And I think that concludes the
21 agenda, Your Honor.

22 THE COURT: Okay. Does anyone have anything more
23 to say? All right, so that will conclude the omnibus
24 hearing in Sears, and that's the only matter on the calendar
25 for today, so I'm going to ring off at this point.

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1 (Whereupon these proceedings were concluded at
2 10:28 AM)
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Page 24

1 C E R T I F I C A T I O N

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3 I, Sonya Ledanski Hyde, certified that the foregoing
4 transcript is a true and accurate record of the proceedings.

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Sonya M. Ledanski Hyde

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Sonya Ledanski Hyde

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19

20 Veritext Legal Solutions

21 330 Old Country Road

22 Suite 300

23 Mineola, NY 11501

24

25 Date: July 16, 2020

[& - behalf]

Page 1

&	28.7 11:10,13,21 29 19:16	account 11:24 accurate 24:4 actively 16:11 additional 16:20 address 13:20,21 13:22 14:1 15:14 adjourned 8:10 15:6,15,16,18 16:10 19:17,20 adjournment 16:6 19:18 administrative 2:15,20 8:14 9:8 9:13 10:9 adversary 13:15 13:17,18 advisor 2:8 agenda 2:1 6:12 6:20 8:10 15:15 18:10,19 19:15,22 21:21 agree 20:25,25,25 21:15 agreement 7:7 ahead 9:17 al 6:3 alexander 4:22 allow 10:2 allowed 11:10,13 11:22 alves 4:15 amended 8:13,19 8:20 9:16,19 12:20 13:8 14:24 amount 7:13,22 11:21 14:6 amounts 10:7 ana 4:23 analytical 7:21 analytics 2:6 6:22 answer 8:25 apologize 15:23	appear 21:7 applicable 10:8 application 2:4,5 6:21,23 7:3,12,13 7:16,17,20,22,23 23:6 appropriate 13:23 approximately 10:12 11:23,24 17:17 argue 18:17 argument 15:5 arlene 4:15 aspect 19:2 assuming 14:10 16:9 18:18 assumption 16:20 attached 7:24 attorney 3:4,11 3:19 august 13:2,4,6 authority 10:1 authorized 6:8 available 16:13 avenue 3:5,13 avoid 10:4 avoidable 12:11 13:12 17:25 18:2 18:14 avoidance 14:4 aware 14:1
1	3 12:16 15:15 30 2:9 300 1:13 24:22 31st 12:22 330 24:21 364,650.18 2:10 3rd 3:13	4 4 11:16 4th 13:2	b b 1:21 7:24 14:20 18:1 back 11:14,23 balance 8:1 bane 4:14 bankruptcy 1:1 1:12,23 2:8 basis 6:10 18:12 behalf 2:16,21 15:1
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11th	18-23538 1:3	8062 2:17,21 9:11	
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